

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

_____ /

**Docket No. 2011-3105 CMH
Case No. 32745628**

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held ██████████. ██████████, the Appellant's ██████████ appeared on behalf of the minor child. ██████████, the Appellant's ██████████ was present as a witness on behalf of the Appellant.

██████████, was present on behalf of the CMH. ██████████ for the Appellant, was present on behalf of the CMH. ██████████, was present on behalf of the CMH. ██████████, was present on behalf of the CMH. ██████████, was present on behalf of the CMH.

ISSUE

Did CMH properly determine the Appellant was not eligible for supports coordination and respite services as a developmentally disabled person?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is ██████████ Medicaid beneficiary.
2. ██████████ CMH is responsible for providing Medicaid-covered mental health and developmental disability services to eligible recipients in its service area.
3. The Appellant is diagnosed with mild cerebral palsy, juvenile arthritis, borderline

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intellectual function and mood disorder.

4. The Appellant has been participating in Community Mental Health services for [REDACTED] years. She is receiving supports coordination and respite services.
5. The CMH has completed a review of the Appellant's case. The supervisor for Services for Children and Families, a qualified mental retardation professional and LMSW, completed the case review.
6. As a result of the case review, the CMH determined the Appellant no longer met qualifying criteria for developmental disability services. It is believed the Appellant may qualify for services by meeting criteria for children with a serious emotional disturbance.
7. The CMH sought to terminate services authorized through developmental disability criteria and to evaluate the Appellant to determine what needs she may have should she meet the criteria for children with a serious emotional disturbance.
8. The CMH notified the Appellant she no longer met the criteria for services as a developmentally disabled person on [REDACTED].
9. The Appellant's [REDACTED] requested a local appeal of the aforementioned determination.
10. The CMH then conducted a Utilization Management Review for the Appellant. The prior determination was upheld.
11. The CMH sent an Advance Negative Action Notice [REDACTED].
12. The Appellant requested a formal administrative hearing [REDACTED].
13. The Appellant has a combination of cognitive and physical impairments.
14. The Appellant does not have a substantial functional limitation with self care, receptive and expressive language, mobility or her capacity for independent living.
15. The Appellant has a substantial functional limitation in learning and self direction.
16. The Appellant's most recent I.Q. resulted in [REDACTED], placing her in the borderline intellectual functioning category.
17. The Appellant is ambulatory without use of cane or walker. She has limitation with long distances and may use a walker, cane or wheelchair if for unusually long distances or lengthy events.
18. The Appellant is independent with toileting, eating and dressing. She has

participated in occupational therapy to address some functional limitations she experienced in the past, which has resulted in improvement in her functional ability.

19. The Appellant can play on the playground, climb hills, use the swing, run and use the jungle gym.
20. The Appellant is selectively mute at times. She does understand what is being said and will speak when she wants to do so. She does make herself understood.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

42 CFR 430.10

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent she finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter,

may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Community Health (MDCH) operates a sections 1915(b) and 1915(c) Medicaid Managed Specialty Services waiver. [REDACTED] CMH contracts with the Michigan Department of Community Health to provide specialty mental health services, including DD services. Services are provided by CMH pursuant to its contract obligations with the Department and in accordance with the federal waiver.

In performing the terms of its contract with the Department, the PIHP must apply Medicaid funds only to those services deemed medically necessary or appropriate. The Department's policy regarding medical necessity provides as follows:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or
- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of

community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and
- For beneficiaries with mental illness or developmental disabilities, based on person-centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.

Medicaid Provider Manual, Mental Health and Substance Abuse, Beneficiary Eligibility Section, October 1, 2009

Denial of CMH Developmental Disability Services

As noted above the *MDCH/CMHSP 2008 Managed Specialty Supports and Services Contract, Section 3.3 and Attachment 3.1.1*, Section III(a) Access Standards directs a CMH to the Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter* for determining coverage eligibility for Medicaid beneficiaries. The text of the introductory paragraph of Medicaid Provider Manual (MPM) Section 1.6 states that it provides guidance to PIHP's regarding eligibility for a person with a developmental disability.

However, a review of the chart provided in MPM 1.6 (text omitted in this Decision and Order) demonstrates that while it is instructive on eligibility for people with mental illness, it does not specifically set forth any eligibility guidelines for determining whether a person with physical and/or cognitive limitations meets a threshold or simply stated, qualifies for services as a developmentally disabled person. In this case the CMH used the definition of developmental disability found in the mental health code. Normally the MDCH/CMHSP contract identifies the controlling authority. Here, the *MDCH/CMHSP Managed Specialty Supports and Services Contract, Attachment 3.1.1*, (contract) instructs that the use of the Michigan Mental Health

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code is only to be used if the individual seeking eligibility is NOT eligible for Medicaid. However, the definition section of the contract contained the same definition for developmental disability as the Michigan Mental Health Code, thus it appears appropriate to rely on this definition when making eligibility determinations.

The Mental Health Code definition, also found in the definition section of the contract states:

(21) "Developmental disability" means either of the following:

(a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:

- (i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
- (ii) Is manifested before the individual is 22 years old.
- (iii) Is likely to continue indefinitely.
- (iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

- (A) Self-care.
- (A) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

MCL 330.1100a

For purposes of simplifying the application of the Mental Health Code definition to Appellant's facts, in general, the Appellant must meet four criteria: 1) a mental or physical impairment, 2) manifestation before age 22, 3) the impairment is likely to continue indefinitely, and 4) the impairment results in substantial functional limitations in three or more areas of major life activity.

There is no dispute between the parties that the Appellant meets three of the criteria: 1) the Appellant has a combination of mental and physical impairments; 2) The impairments were manifested prior to the age of 22 and 3) the impairments are likely to continue indefinitely. The last portion of the definition is in dispute between the parties. It is contested whether or not the Appellant's impairments result in substantial functional limitations in three or more areas of major life activity.

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The six areas of functioning contained in the definition are self care, receptive and expressive language, learning, mobility, self direction, capacity for independent living and economic self sufficiency. The parties further stipulate that the Appellant has substantial functional limitations in 2 of the areas: learning and self direction. It is further stipulated that economic self sufficiency cannot be addressed as criteria applicable to an ██████████, thus it is not considered here. Testimony concerning self care, mobility and language was taken from both parties because they are in dispute.

The Appellant's ██████████ asserts the Appellant is substantially functionally limited in self care because without assistance or supervision she would run cold water for her bath and cannot wash herself thoroughly. She stated she lacks coordination, thus it is hard to use zippers on her coat and she does not always wipe appropriately after using the toilet. She further testified the Appellant is unable to do her own hair. She stated the Appellant does put her own pants and shirts on.

The witness for CMH testified that the testimony from the Appellant's ██████████ does not evidence a substantial functional limitation in self care. She stated an example of a substantial functional limitation in self care would be the inability to pull her own pants up. She stated the Appellant does toilet independently and dresses independently.

This ALJ finds the evidence presented regarding how the Appellant performs self care evidences she is not substantially functionally limited in that major life activity. The difficulties articulated by her ██████████ are age appropriate and there is evidence in the record she has improved in her functioning following occupational therapy. While she may benefit from some occasional assistance wiping better after toileting, this does not evidence she is substantially functionally limited. The same holds true for her ability to bath and use zippers. It is age appropriate to require some assistance with zippers still at ██████████ and have the temperature of bath water set for you. Nor is there any evidence in the record the Appellant has reached her maximum ability to perform these self care activities. There is no reason to believe she will not continue to improve in her functional ability as she gets older and gains experience. Finally, having some limited assistance with some aspects of self care does not evidence a substantial functional limitation in that area.

Testimony regarding receptive and expressive language was taken. The witness for the CMH stated that an example of a substantial functional limitation in this life activity for ██████████ would be in the inability to follow 1 or 2 step instructions. It was not asserted the Appellant is unable to do so.

This ALJ finds there is no evidence in the record to support a finding the Appellant is substantially functionally limited in this major life activity.

Whether the Appellant has a substantial functional limitation with mobility was in dispute. The witness for the CMH testified she has been with the Appellant during outings in the summer. She has seen her running, swinging on swings, climb a hill and use a jungle gym. She walks unassisted unless she is engaged in long distance ambulation or lengthy activity.

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The Appellant's ██████████ stated she bought a walker and wheelchair for her ██████████ to use for longer distances. She said she does not play outside in winter when it is really cold and she has a lot of pain. She said she has to wake up 45 minutes early every day to address the pain and stiffness she has in the morning from her RA.

This ALJ finds the evidence of record does not support a finding the Appellant is substantially functionally limited with mobility. She does have some functional limitations as evidenced by her stiffness and pain, however they are not substantial. She awakens early as a means of addressing it and thereafter is able to and does ambulate without assistance. The limitations she does experience cannot be characterized as substantial. The need to rest or use an assistive device for long days or long distances also does not evidence a substantial functional limitation. This would be better evidenced by wheelchair dependence. Occasional use of a wheelchair or rest periods is not the same as wheelchair dependence.

The final major life activity contained in the criteria and not addressed thus far is capacity for independent living. At ██████████, this entails an ability to live in the community rather than an institutional setting. There was no evidence in the record the Appellant requires institutional care, thus she is not substantially functionally limited in this major life activity.

The Appellant's ██████████ provided evidence the Appellant has special educational services at school. The criteria used by the school to determine service needs is not the same as the definition contained in the Michigan Mental Health Code and contract which controls the determinations of the PIHP. While this ALJ can appreciate the concerns harbored by the Appellant's ██████████ that her ██████████ remain served, the correct criteria must be adhered to by this ALJ at hearing.

Summary

The credible and substantial evidence of record establishes the Appellant does not meet the definition of a developmentally disabled person under the Michigan Mental Health Code. She does have substantial functional limitations in 2 of the 6 major life activities contained in the statutory definition, however, this is insufficient to establish a need for services from the CMH. The CMH has recommended the Appellant be evaluated for service need as a seriously emotionally impaired child, thus needs identified arising out of that type of evaluation will be addressed in a service plan should she meet qualifying criteria.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that:

The Appellant did not meet the Michigan Mental Health Code eligibility requirements for developmentally disabled services provided through the CMH.

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IT IS THEREFORE ORDERED that:

The CMH's termination of supports coordination and respite services is UPHELD.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

CC:



Date Mailed: 1/24/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.